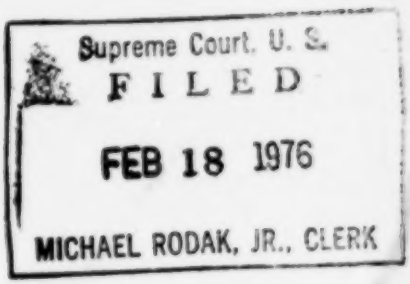
No. 75-1176

IN THE SUPREME COURT OF THE UNITED STATES



JOSEPH M. KADANS,

Appellant

VS.

STATE BAR OF NEVADA

Appellee

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF NEVADA

JURISDICTIONAL STATEMENT

Attorney: Joseph M. Kadans, Esq.
3519 Thom Blvd.,
Las Vegas, Nevada 89106
In pro se

IN THE SUPREME COURT OF THE UNITED STATES

JOSEPH M. KADANS, Appellant	)	
vs.	)	No. _____
STATE BAR OF NEVADA Appellee	)	

JURISDICTIONAL STATEMENT

NOW COMES JOSEPH M. KADANS, a member of the Bar of the Supreme Court of the United States and files this jurisdictional statement on behalf of himself as Appellant in pro se in the above entitled cause.

The following information is provided as set forth in Rule 15 of the Supreme Court Rules:

1. Reference to opinion below. There is one opinion of the Court below, the Nevada Supreme Court, appended hereto as Exhibit A.

2. Jurisdiction. Nature of proceeding and relevant statute. This is an appeal from the Nevada Supreme Court pertaining to due process of law, the Commerce Clause of the U. S. Constitution and the anti-trust laws. In addition to the 14th Amendment, relating to the prohibition against denial of due process of law, this case also involves denial of equal protection of the laws, another prohibition of the 14th Amendment. The Commerce Clause is contained in Art. I, sec. 8 of the U. S. Constitution. The anti-trust laws are involved and the relative statute under the Commerce Clause is the Sherman Anti-Trust Act, 15 USC sec. 1 et seq.

2(a) Jurisdiction. Date of judgment, appeal filing. The judgment denying the Petition filed with the Nevada Supreme Court in an original proceeding in

that Court was filed on October 23, 1975. An order was entered by that Court on December 5, 1975, denying leave to file a motion for reconsideration. The Notice of Appeal to the United States Supreme Court was filed on January 23, 1976 with the Nevada Supreme Court.

2(b) Jurisdiction. Statutory provision. The statutory provision believed to confer jurisdiction on the United States Supreme Court is:

"28 United States Code 1257(2). By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

2(c) Cases believed to sustain the jurisdiction.

A. As to due process and equal protection of the laws:

> Vlandis v. Kline, 412 U.S. 441, 37 L ed 2d, 63, wherein it was held that it was a violation of due process of law for a state to establish a permanent and irrebutable presumption. This case pertained to residential requirements of a state university but the Chief Justice of the United States (in his dissent) evaluated the decision as being applicable to situations involving the rights of graduates of small law schools and medical schools to demonstate and prove that they acquired sufficient skills to practice their professions.

Cleveland Board of Education v. LaFleur, 414 U.S. 632, 39 L ed 2d 52, wherein it was held that the Vlandis Case established a principle that required consideration of individual capacity and that a flat rule that made no provisions for individuals was unconstitutional. This case pertained to the ability of a pregnant school teacher to perform her school duties.

Turner v. Dept. of Employment Security,

96 S. Ct. 249, No. 74-1312. In this case, continuing the rule stated in the Vlandis Case, supra and the Cleveland Board of Education Case, supra, the U. S. Supreme Court reiterated the rule that the Constitution requires a more individualized approach and held that the 14th Amendment requires that states must achieve legitimate state ends through more individualized means when basic human rights are at stake.

> F. S. Royster Guano Co. v. Virginia, 253 U.S. 412. This case established that there must be some reasonable relation "to the object of the legislation, so that all persons similarly circumstanced shall be treated alike" under the Equal Protection Clause. Where a State, in unpublished, unpublicized cases, admits certain persons having official State connections, although otherwise unqualified, to the practice of law and denies even a qualification examination to a highly qualified person, but without State or political connections, this is clearly unequal treatment and a violation of the 14th Amendment.

Board of Regents v. Roth, 408 U.S. 564. This case refers to the "right of the individual to contract, to engage in any of the common occupations of life * * *." In the case at bar, Appellant has been denied the opportunity to continue in his occupation, contrary to due process, the equal protection clause, the commerce clause and anti-trust laws.

Katzenbach v. McClung, 379 U.S. 294 refers to obstruction of interstate commerce and the deterrence to the establishment of a service in other areas of the United States when State laws prevent travel from one state to another. In the case at bar, Appellant, a lawyer practicing law in Michigan moved to Nevada and was there denied the right to continue in his profession, thereby depriving him of his means to earn a livelihood and

also interfering with his right to travel in interstate commerce and to establish his office in Nevada and to service the people of that State.

United States v. Employing Plasters Assn., 347 U.S. 186, 98 L ed 618. Here the Court expressed indignation that a local group of people were able "to dictate who could and who could not buy plastering materials that had to reach Illinois through interstate trade if they reached there at all." In the case at bar, the Appellee, the State Bar of Nevada, with authority to propose rules, constituting State law, determining which lawyers from other States could and who could not move to Nevada to practice law, conspired with the members of the Nevada Supreme Court, who have the authority to adopt the recommended rules of the State Bar of Nevada, to adopt rules that enables them, to this day, to adopt rules that deny to lawyers from other States the right to travel to Nevada and to practice law.

Burke v. Ford, 389 U.S. 320, 19 L ed 2d 554 established that any intrastate conspiracy that would invariably reduce competition, the obvious purpose of the present conspiratorial arrangement in Nevada, would cause a price increase. By denying to skilled and experienced lawyers of other states the right to travel to Nevada and to establish offices for the practice of law, this allows the existing profession in Nevada to increase prices, to the detriment of the people of the State of Nevada.

2(d) Jurisdiction. The State law involved.

Nevada Supreme Court Rule 51:
"An applicant for examination for a license to practice as an attorney and counselor at law in this state shall: * * *
4. Have received a degree of bachelor of laws, or an equivalent law degree, from a law school approved by the committee on

legal education and admissions to the bar of the American Bar Association, and shall present evidence of the same."

Nevada Supreme Court Rule 72.5:
"1. Notwithstanding any other provisions of these rules, upon his compliance with the requirements of this rule the supreme court may admit an individual to practice law in this state who is an instructor, teacher, professor or dean of the National College of State Trial Judges at the University of Nevada or of any law school that may be established as an integral part of the University of Nevada and approved by the committee on legal education and admissions to the bar of the American Bar Association."

3. Questions presented by the appeal:

A. Appellant graduated from the University of Baltimore School of Law on June 14, 1943. He passed the Maryland bar examination and was admitted to that bar later in the same year. On Dec. 10, 1946, he was admitted to the bar of the Supreme Court of the United States. In 1952, after moving to Michigan, he was admitted to the Michigan bar. In 1962, after moving to Nevada and although having practiced law for almost 20 years he was prevented from earning his livelihood as a lawyer in Nevada by a Supreme Court Rule that required graduation from a law school approved by a committee of the American Bar Association. The University of Baltimore is now approved by the ABA committee but was not so approved by the committee in 1946 but, in 1946, it was approved by the State of Maryland as an approved law school. The issue presented is whether or not a State law, as represented by a Supreme Court Rule, is valid and not in conflict with the 14th Amendment prohibition against deprivation of due process of law and equal protection of the law in preventing a highly skilled and competent lawyer of many years

of successful legal counseling, trial practice, law writing and law school lecturing from earning a livelihood in his chosen profession.

B. Assuming the fact situation in Question A above, does the Nevada Supreme Court rule requiring all applicants for admission to the Nevada bar to have graduated from a law school approved, at the time of graduation, by a committee of the American Bar Association, regardless of the time of graduation, regardless of the years of practice and regardless of the eminence of the applicant in his standing in his profession constitute such a permanent and irrebutable presumption so overbroad in scope as to constitute the absence of due process of law?

C. Assuming the fact situation in Question A above and assuming further that the Supreme Court, after denying to Appellant the right to take the State bar examination, in an unpublished and unpublicized proceeding, admitted to the State bar a Nevada Highway Department attorney who had not graduated from an ABA approved law school and later, after again denying to Appellant the right to take the Nevada bar examination, admitted to the examination and to the practice of law in Nevada another individual who had never attended any United States law school whatsoever, also in an unpublished and unpublicized proceeding, but who was represented before the Supreme Court by a Nevada attorney who at that time was also the Lt. Governor of the State of Nevada, do these actions by the Supreme Court constitute deprivation of equal protection of the law contrary to the 14th Amendment?

D. Assuming the fact situation in Question A above, was the denial to Appellant of the right to take the bar examination a violation by the State of the Commerce Clause of the United States Constitution, preventing Appellant from free travel in interstate commerce?

E. Assuming the fact situation as stated in Question A, was the denial to Appellant of the right to demonstrate his qualifications to continue in the practice of his profession a violation of the anti-trust laws of the United States as to tend to create a monopoly and to increase the cost of legal services, contrary to the Sherman Anti-Trust Act 15 USC sec. 1, et seq. or the Clayton Act, 15 U.S.C. sec. 15, et seq.

4. Concise statement of the case.

Appellant attended a night law school from 1940 to 1943 while employed as a Safety Inspector and highway accident investigator by the U. S. Interstate Commerce Commission. He graduated from the University of Baltimore on June 14, 1943, a law school approved by the State Bar of Maryland and the Court of Appeals of the State of Maryland, took the bar examination and passed it and was admitted to the Maryland Bar the first time and admitted to practice in Maryland later in the year. The following year, 1944, he resigned from U. S. Government Service to devote full time to the practice of law.

Later, after moving to Michigan, Appellant was admitted to the Michigan Bar, on Motion, without examination, subject only to a character check. Admission took place in January, 1952. Appellant practiced law in Michigan until March, 1962, when he moved to Nevada. His first application for admission to the Nevada bar took place in 1963 but admission was denied solely on the ground of not having graduated from a law school approved by a committee of the American Bar Association.

Several efforts to seek permission to continue in his profession failed and recently, after the Vlandis v. Kline decision, supra Appellant determined to try again.

An original Petition was filed with the Nevada Supreme Court, pointing to the Vlandis Case. A copy of the Petition is part of the Record.

Appellant respectfully urged the Court to modify the Supreme Court rules "to conform with the decision in the aforementioned case."

Appellant suggested that inview of the special circumstances in his own case, as an experienced law practitioner with many years of honorable practice, as well as a law writer and lecturer, having written "Principles of Maritime Law" a book on the recommended list of admiralty textbooks for law students of the Association of American Law Schools and having lectured for many years on various legal subjects, including maritime law, Federal procedure, insurance law and several other subjects, the Supreme Court might wish to modify Supreme Court Rule 72.5, referred to in 2(d) above, so as to allow Appellant, who is presently Dean of the Institute of Advanced Law Study and a member of the Association of Continuing Legal Education Administrators, to be admitted to the Nevada Bar on motion, similar to the admission on motion, provided for under Rule 72.5, for the Dean of the National College of State Trial Judges.

Alternatively, Appellant suggested that the Supreme Court, as the State Agency empowered by statute to make regulations governing admission to the Bar, allow Appellant to take "the next scheduled Nevada bar examination."

Appellant pointed out in his Petition to the Nevada Supreme Court that "he has been deprived unlawfully of his rights under the Nevada and United States Constitutions with respect to due process of law and equal justice under the law."

Appellant further pointed out in his Petition that "he has been the victim of invidious discrimination and that he has been denied the minimum standards of due process, now made clear by the decision of Vlandis v. Kline, supra."

The Nevada Supreme Court summarily dismissed the Petition, ruling that the matter of change of the rules was not a matter for litigation. The Court was silent on the question of applicability of the Vlandis Case, supra, to the case at bar.

Another effort was made in a Motion for Reconsideration, wherein violations of Federal laws were set forth. However, the Nevada Supreme Court summarily denied leave to file the reconsideration motion, which had been attached to the Motion for Leave to File the Motion for Reconsideration.

5. Substantiality of Federal questions.

The Federal questions are of considerable substance, being of great concern to many men and women engaged in trades and professions fearful of traveling from one state to another because of strict and arbitrary regulations which, as in the case at bar, prevent even the most highly skilled individuals, from continuing in the work in which a livelihood is earned, thus interfering with perhaps the most basic and most important right of mankind.

There are times when State employees in charge of enforcement of onerous State laws resent intervention on the part of Federal officers who enact Federal legislation or enforce Federal constitutional requirements. Comity between the States and the Federal Government requires that such instances be kept to a minimum. However, no matter how clear the principle, some States will not yield until and unless the United States Supreme Court specifically rules in connection with the particular condition in such States.

Consideration of the case of Zucht v. King, 260 U.S. 174 indicates that the case at bar is very similar to the situation in that case. Here, as in Zucht, there is a question of the validity of the Nevada law, as stated in a rule of the Nevada Supreme Court. In Zucht, this Court held that when a question concerned the validity of the State law, it was a proper question for consideration by the Court.

Just as in Zucht it was ruled that where equal protection of the laws are denied a substantial constitutional question is involved so therefore is a sub-

stantial Federal question involved in the case at bar because it is clear that in the case at bar there has been a denial of equal protection of the laws.

The clear denial of constitutional rights to even one person should be enough for remedial action by this Honorable Court. The Court has acted on behalf of single individuals in like circumstances on many occasions. However, in the case at bar, the decision will have great significance for millions of men and women prevented from moving about from one state to another for fear of selfish and monopolistic laws of some states that seek to keep out of the state individuals who may constitute competition in some vocation or profession. Such rules or laws are simply the manifestations of the old medieval labor guild laws of ancient days that created so much misery in those days. Only Justices of the United States Supreme Court or other Federal judges serving for the duration of life seem to have the courage to strike down the bad laws that plague our society.

Respectfully submitted,

JOSEPH M. KADANS
Attorney At Law - in pro se
3519 Thom Boulevard
Las Vegas, Nevada 89106

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, as a member of the Bar of the Supreme Court of the United States that 3 copies of this Jurisdictional Statement were mailed on the 5 day of February, 1976 to:

Samuel S. Lionel, Esq.
Atty., State Bar of Nevada
302 E. Carson-Suite 800
Las Vegas, Nev. 89101

Robert List, Esq.
Nevada Atty. Gen.
Sup. Ct. Bldg.
Carson City, Nev. 89701

JOSEPH M. KADANS

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH M. KADANS, Petitioner, vs. STATE BAR OF NEVADA, Respondent.	)	No. 8203 (Filed Oct. 23, 1975 C. R. Davenport Clerk, Supreme Court)

ORDER DISMISSING PETITION

Joseph M. Kadans has filed an in pro per petition against the State Bar of Nevada, wherein he suggests that the Supreme Court should amend a particular Supreme Court Rule.

The State Bar has moved to dismiss the petition, pointing out that it neither contains a cognizable nor justiciable issue or allegation; and, Kadans, in an instrument filed in response to the motion to dismiss, concedes "... that this is not a matter for litigation."

Accordingly, we grant respondent's motion and

ORDER this petition dismissed.

(signed) C. J.
Gunderson

(signed) J.
Batjer

(signed) J.
Zenoff

(signed) J.
Mowbray

(signed) J.
Thompson

cc: Samuel S. Lionel, Esq.
Maurice J. Sullivan, Executive Secretary, Nevada State Bar
Joseph M. Kadans

EXHIBIT A

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH M. KADANS,
Petitioner,
vs.
STATE BAR OF NEVADA,
Respondent.

No. 8203

(Filed Jan. 23, 1976)

NOTICE OF APPEAL
TO THE SUPREME COURT OF THE UNITED STATES

1. Notice is hereby given that Joseph M. Kadans, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Nevada dismissing the petition filed in the above entitled cause, filed on Oct. 23, 1975. This appeal is taken pursuant to 28 U.S.C. 1257(2).

2. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

A. Petition filed May 8, 1975.
B. Motion to Dismiss and Points and Authorities in Support of Motion to Dismiss.
C. Points and Authorities of Petitioner in response to Motion to Dismiss.
D. Order dismissing Petition, filed Oct. 23, 1975.

3. The following questions are presented by this appeal:

A. Does the case of Vlandis v. Kline, 412 U.S. 441, 37 L ed 2d 63 (1973), declaring as unconstitutional the laws of a State creating permanent and irrebutable presumptions apply to the case of a lawyer long in practice in one State of the United States who moves to another State and in seeking to continue in his profession is denied the right to earn his livelihood in his profession on the theory that his law school, although accredited by the State of his residence, Maryland, was not, at the time of his graduation, in 1943, accredited by the American Bar Association

although it has since been accredited by this Association?

B. Was the Chief Justice of the United States in error when he stated in his dissenting opinion that thereafter graduates of law schools or medical schools must be allowed to prove their qualifications and that in view of the decision aforementioned a State may not forever bar them from practicing the professions they have learned in school, without any opportunity to prove their skills, unless a certain named association of lawyers or doctors have approved the law school or medical school?

C. May a State deprive an individual of his property right to earn a livelihood in his vocation, in which he has engaged for many years (for 20 years, in the case at bar) honorably and well, on the ground that his education many years ago, while preparing for his profession, does not meet present day standards of law school preparation, despite the fact that at the time of preparation, in the case at bar, the State in question had regulations not more stringent than existed in the State wherein he was preparing for his profession?

D. Is a lawyer with 20 years of experience in the practice of law properly denied admission to the State bar examination on the ground that he had not graduated from a law school approved by the American Bar Association to be denied the right to continue to earn his livelihood in his profession when the State licensing tribunal, during the same time interval, admits to the practice of law an individual who had never even attended any United States law school whatsoever, in a secret and confidential proceeding before the tribunal and in another confidential proceeding admitted a lawyer from another State who had not attended an ABA approved law school?

E. Does a State unconstitutionally violate the commerce clause in establishing an arbitrary and unreasonable standard for the licensing of a professional person who

who wishes to enter the State from another State to carry on the practice of law, hus interfering with interstate commerce?

F. Is it a violation of the anti-trust laws of the United States for the members of a profession in one State to establish arbitrary and unreasonable regulations having the effect of reducing competition from lawyers of other States who wish to move into the State with arbitrary and unreasonable standards?

G. Does a State properly exercise the police power of a State for the protection of the public when it establishes a rule barring a lawyer from taking the State bar examination, even though the lawyer, at the time of applying, had been practicing law in two other States, Maryland and Michigan and in addition to being a member of the bar in good standing in these States was also a member in good standing of the bar of the Supreme Court of the United States, the United States Courts of Appeal of the 4th and 6th Circuits, the Court of Appeals of the District of Columbia and who has since been recently admitted to the bar of the United States Court of Appeals of the Ninth Circuit and, in addition, is the author of Principles of Maritime Law, Federal Administrative and Court Procedure, The Law of International Trade, Elements of Insurance, Principles of Libel and Slander Law, Principles of Malpractice Law, Principles of Evidence Law, Principles of Environmental Law and who is now engaged in writing a law book entitled Principles of U. S. Supreme Court Practice?

JOSEPH M. KADANS
Attorney At Law
In pro se
3519 Thom Blvd.
Las Vegas, Nevada 89106

BEST COPY AVAILABLE